

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

**Criminal Number: 16-cr-20460
Hon. Mark A. Goldsmith**

V.

D-5 PATRICK JOHNSON,

Defendant.

**DEFENDANT PATRICK JOHNSON’S REPLY TO THE
GOVERNMENT’S RESPONSE TO MOTION TO PRECLUDE
THE GOVERNMENT’S USE OF RAP LYRICS
AND RAP VIDEOS AT TRIAL**

The Government’s intended use of the rap lyrics/videos at issue is nothing short of unadulterated racism.¹ There is absolutely no question that the Government’s use of the rap videos is to shock, awe and prejudice what will most likely be a predominately white jury with rap lyrics/videos made by young African-American males.

The Government freely admits that the rap videos are important to proving the Government’s case. The Government further argues that the rap videos establish

¹ Counsel wants the record to be clear that he is not accusing the individual Assistant United States Attorneys of being racist. Only that the trial strategy is racist.

the existence of a criminal enterprise more probable than it would be without the evidence. That is a shocking and disturbing admission.

The Government intends to frighten the jury with rap videos that feature poor inner-city African-American males that most of white American fears. The language and subject matter are offensive to most people. The Government's objective is to obviously perpetuate the stereotype of poor inner-city African-American males. In other words, because the Defendants are poor, black, live in the ghetto, and rap, they must all be gang bangers. The Government is being totally disingenuous when it argues that the rap videos are not being used to depict the Defendants as morally reprehensible because of their abstract beliefs as expressed through the content of their videos. This is exactly what the Government intends to do.

Moreover, the Government has cherry-picked some of the rap lyrics and have put its own spin on the meaning of these lyrics. Furthermore, the Government has engaged in a convoluted analysis of the Rules of Evidence. The Government will assert that some lyrics are admissible non-hearsay not offered to prove the truth of the matter asserted, that some lyrics are admissions of a party opponent per F.R.E. 801(d)(2)(A), adopted statements per F.R.E. 801 (d)(2)(B) or co-conspirator statements made in furtherance of a conspiracy per F.R.E. 801(d)(2)(E).

The fact of the matter is that rap lyrics/videos are the artistic expression of a depressed people who have been subjugated by the white race for hundreds of years.

To reiterate Ohio State Law Professor Michelle Alexander, rap lyrics are the by-product of denials of employment, housing, public benefits and, the right to vote which has caused African-American males to identify with criminals by writing rap lyrics. It is a sad commentary that rap music is singled out as a medium of artistic expression that is used to obtain convictions against African-Americans.

It is well documented that rap lyrics are generally written in the first person. *See, Andrea Dennis, Poetic (In) Justice? Rap Music Lyrics as Art, Life and Criminal Evidence*, 31 Colum. J.L. & Arts 1, 22-23 (2007). If one takes the lyrics from some of the top rappers and swapped the names of the Defendants, the Government would make the same argument regarding “motive and intent” and the existence of a criminal enterprise.

Attached as Exhibit 1 are the lyrics from some of the more famous rappers; Kendrick Lamar, Vic Mensa, 2 Pac, 50 Cent, DMX, Lil Wayne, Menace, Mitchy, Slick, Snoop Dog and Notorious B.I.G.

By way of example, one of the most popular rappers today is Kendrick Lamar who has a rap called “m.A.A.d. city,” which has nearly 70 million views on YouTube. In fact, Kendrick Lamar was nominated for 8 awards at this year’s MTV Video Music Awards, including Video of the Year. The rap contains the following verse:

“[W]e adapt to crime, pack a van with four guns at a time,
with the sliding door, fuck is up? Fuck you shooting for if

you ain't walking up? You fucking punk, picking up the fucking pump. Picking off you suckers, suck a dick or die or sucker punch A wall of bullets coming from AK's, AR's, aye y'all. Duck"

Clearly, these lyrics are protected by the First Amendment as a form of artistic expression despite the vile language and the promotion of violence.

Another example is from a rap from Vic Mensa called "Down for Some Ignorance," which contains the following verse:

"[U]p for revenge and I'm down for some ignorance. Run upon in his crib, lay down all the witnesses. Finna take a ride and we packing a business trip. Me with a Canon in my hand can you picture this."

The defense would respectfully encourage the Court to review the lyrics contained in Exhibit 1. A review of the other lyrics track the two examples highlighted above. Take away the name of the rapper and insert the name of a Defendant and the Government would argue that the lyrics go to show the Chedda Grove enterprise's purpose and goals including trafficking narcotics and using violence and murder to intimidate witnesses and enemies.

The lyrics the Government intends to introduce into evidence are not unique. They are no different than the lyrics contained in Exhibit 1. All of these lyrics are protected by the First Amendment as a form of artistic expression. There is absolutely no question that the Government's intent is to take protected speech and turn it on its head by using music to obtain convictions. African-American males are

the only group of citizens that have their own form of artistic expression used against them. This Honorable Court should not condone such a blatantly racist strategy.

Respectfully submitted,

/s/ Michael A. Rataj

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CERTIFICATE OF SERVICE

Michael A. Rataj hereby states that on October 1, 2018, I electronically filed *Defendant's Reply to the Government's Response to Motion to Preclude the Government's Use of Rap Lyrics and Rap Videos at Trial and Certificate of Service* with the Clerk of the Court using the ECF system which will send notification of such to the Assistant United States Attorney's office.

/s/ Michael A. Rataj
MICHAEL A. RATAJ